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Guatemala

BRITISH HONDURAS: THE GUATEMALAN CLAIM

CONTENTS

Page

- 1 The Early History of the Territory
- 2 The Treaty of 1859
- 3 The Guatemalan Argument
- 4 United Kingdom Reply
- 4 Legal Settlement Proposed
- 5 British Honduran Views
- 8 Appendix 1
The Mexican Claim
- 9 Appendix 2
Facts about the Territory
- 6-7 Map

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Reference Division

ID 1358 June, 1960

**BRITISH INFORMATION SERVICES
AN AGENCY OF THE BRITISH GOVERNMENT**

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903 National Press Building, Washington 4, D.C.
200 South Michigan Avenue, Chicago 4, Illinois
2516 Pacific Avenue, San Francisco 15, California
448 South Hill Street, Los Angeles 13, California

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*Printed in England by Trade Union Labor
by Swindon Press Ltd., Victoria Road, Swindon*

BRITISH HONDURAS: THE GUATEMALAN CLAIM

BRITISH Honduras lies on the east coast of Central America and is bounded by Mexico in the north and by Guatemala in the west and south; it has no common frontier with the Republic of Honduras, from which it is separated by a corridor of Guatemalan territory. An account of the economic and political problems and progress of British Honduras will be found in I.D. 1319: the present paper is concerned with the claim to the territory made by Guatemala.

THE EARLY HISTORY OF THE TERRITORY

Little is known of the early history of the area which is now British Honduras, but the numerous ruins throughout the territory indicate that for hundreds of years it was heavily populated by Maya Indians. Their civilisation appears to have reached its apogee about the eighth century. Thereafter, the people began to migrate, and, long before the first Europeans reached the Caribbean, had abandoned the area.

In 1502, during his fourth voyage, Columbus discovered and named the Bay of Honduras, though he did not actually visit that part of the coast which later became British Honduras. The first recorded European settlement was in 1638, by shipwrecked British seamen. The coast began to be frequented by buccaneers and logwood cutters, logwood being then in great demand in Europe for the manufacture of dyes. The British settlement at the mouth of the Belize river had a stormy history during the next 150 years. It was subjected to repeated attacks from neighbouring Spanish settlements; for Spain, with papal sanction, claimed sovereignty over the whole of the new world, except for those regions of South America assigned to Portugal.

By the Treaty of Madrid, of 1670, Spain accorded recognition to the *de facto* British possessions established in the Caribbean area, but did not agree with Britain's contention that the terms of the treaty included the settlement of Belize. Spanish attacks on the settlers, who now numbered about 700, continued.

It was not until 1763, under the Treaty of Paris at the conclusion of the Seven Years War, that Spain, while retaining sovereignty over Belize, conceded to the British settlers the right to engage in the logwood industry there.

Further treaties were entered into in 1783 and 1786, the former confirming the right of British subjects to carry on logwood operations 'in the district lying between the rivers Belize and Rio Hondo', and the latter enlarging the area conceded to include the territory between the rivers Belize and Sibun. None of these agreements affected Spanish sovereignty, but, in practice, very little jurisdiction was exercised by Spain. The British settlers either governed themselves or received administrative officers from the United Kingdom and, in due course, extended themselves over roughly the area of modern British Honduras.

Despite these agreements, Spanish attacks on Belize continued for a time, until a final decisive victory by the settlers in 1798, in a naval engagement off St. George's Cay. From that date, armed aggression by Spain ceased entirely, and the settlers maintained from this time that the country had become British

by conquest. The anniversary of this victory is still marked by a public holiday and patriotic celebrations. British control over the settlement gradually increased as Spanish power in The West Indies and Central America declined.

The Spanish dominions in Central America had been ruled by a Spanish Viceroy, who had his capital in Mexico, and by a Spanish captain-general, who had his capital in Guatemala. The vice-royalty and the captaincy-general were divided into provinces, the provinces of the captaincy-general of Guatemala corresponding in name, and mainly in extent, to the present-day states of Guatemala, Honduras, Nicaragua, Salvador and Costa Rica.

The Guatemalans argue that the territory of British Honduras belonged, in colonial times, to the captaincy-general of Guatemala; that, on the establishment of the Central American Federation in 1823, the rights of Spain passed to the Federation, and that, when it dissolved in 1838, they then passed to Guatemala. It is, however, uncertain whether the captaincy-general of Guatemala ever exercised any authority, in fact, over any part of the territory in question, and there is evidence to support the view that the part of the present territory of British Honduras which was covered by the 1783 and 1786 treaties with Spain (that is, the areas between the Hondo and Sibun) lay within the jurisdictional authority of the captaincy-general and bishopric of Yucatan, and therefore of Mexico. It has therefore been argued that, if any Spanish-American state succeeded to the rights of Spain in this area, that state was not Guatemala but Mexico (see p. 8). In any event, no attempt was made by Spain to exercise sovereign rights after 1816, and no protest was received from Spain over the exercise of British sovereignty in the area covered by the treaties of 1783 and 1786, or against the extension of the boundaries of the British settlement which was taking place at that time.

THE TREATY OF 1859

It was in these circumstances that a treaty of 13th April, 1859, between the United Kingdom and Guatemala, was concluded and duly ratified by both parties. In this treaty Guatemala agreed (Article 1) to the existing boundary between Guatemala and British Honduras, and there is nothing in the treaty to suggest that it involved cession to the United Kingdom of any territory which was previously Guatemalan. By Article 7 'the high contracting parties mutually agree conjointly to use their best efforts by taking adequate means for establishing the easiest communication (either by means of a cart road or employing the rivers or both united, according to the opinion of the surveying engineers) between the fittest place on the Atlantic coast near the settlement of Belize, and the capital of Guatemala, whereby the commerce of England on the one hand, and the material prosperity of the Republic on the other, cannot fail to be sensibly increased, at the same time that, the limits of the two countries being now clearly defined, all further encroachments by either party on the territory of the other will be effectually checked and prevented for the future'.

This Article 7 of the 1859 treaty, which was included by Mr. Wyke (British Chargé d'Affaires to the Republic of Guatemala), who signed for Great Britain, on his own responsibility, is the source of the present Anglo-Guatemalan dispute. Guatemala contends that it was inserted to compensate for an alleged southward extension of British Honduras from the river Sibun to the river Sarstoon in Guatemalan territory, but that the use of the word 'compensation' was avoided in order to conceal the fact that Britain was thus gaining an extension of her territory. The United Kingdom Government has never admitted this contention, but it may well be that the Guatemalans saw in Article 7 advantages to themselves which made them more disposed to sign the treaty. The United Kingdom Government, while not denying that both a moral and legal obligation were incurred by it under Article 7, does deny that any cession of territory by Guate-

mala took place and contends that, at most, Guatemala was signifying the abandonment of an untenable claim; furthermore, Article 7 did not suppose a gift by one contracting party to another, but an obligation to be jointly performed.

Immediately after the conclusion of the treaty, the United Kingdom Government sent an engineer to British Honduras to report on the question of making the road envisaged in Article 7. Misunderstandings subsequently developed about the exact nature of the contributions to be made by the British and Guatemalan Governments to the construction of the road in accordance with Article 7's provision that they 'mutually agree conjointly to use their best efforts' for this purpose. After further negotiations, the two Governments agreed in 1863 to substitute for Article 7 a new convention under which the United Kingdom agreed to pay Guatemala £50,000 in discharge of its outstanding obligation under the Article. This sum, to be paid in instalments, was to be used in constructing the road, the Guatemalan Government itself providing all materials and defraying any additional cost. This supplementary convention was never ratified. The United Kingdom Government indicated their readiness to do so within the stipulated period of six months, but the Guatemalan Government failed to offer ratification until more than a year after this period had lapsed. The Guatemalan Government then not only demanded that the United Kingdom should accept belated ratification, but also desired to add certain explanations which would have had the effect of modifying the original obligations undertaken under the 1863 convention. The United Kingdom Government then refused to ratify the convention, maintaining that it had lapsed because of the delay by Guatemala, and the two Governments were thus thrown back on Article 7 of the 1859 convention. The British Government's view, at that time, was that, by incurring expenses for the preliminary survey of the road and by signing and being ready to ratify the 1863 convention, it had fulfilled its obligations under Article 7.

Since 1863 Guatemala has taken no steps to carry out its obligations under Article 7, although in 1908 it completed, on its own responsibility, and without consulting Britain, a railway from Guatemala city to the sea at Puerto Barrios (the Guatemalan port on the Caribbean some 150 miles from Belize), and in 1959 a modern motor road between Guatemala and Puerto Barrios was completed with the help of funds provided by international organisations. On the other hand the United Kingdom Government has, without prejudice to its view recorded above, made various proposals with the object of carrying out the provisions of Article 7: thus, in 1895, it made an offer to pay £50,000 towards the cost of a railway from Belize to the frontier of the Guatemalan province of Peten. In 1934 it offered to build a road from Belize to the frontier of Peten, and in 1936 made a fresh offer to pay £50,000. Guatemala rejected these offers as well as two subsequent proposals made by Britain to refer the dispute to arbitration. In 1949 the British Honduras Government completed an all-weather road from Belize to the Guatemalan frontier near El Cayo.

THE GUATEMALAN ARGUMENT

The Guatemalan contentions, as shown *inter alia* in a decree passed by the Guatemalan Parliament, are:

1. That it is solely the fault of the United Kingdom that Article 7 has never been implemented, and the attitude of the United Kingdom is tantamount to repudiation of its obligations under the Article;
2. That, as a result of an alleged repudiation of Article 7 by the United Kingdom, Guatemala is entitled to and in fact does declare the whole treaty of 1859 to be null and void, including the provisions in Article 1 which defined the boundaries between British Honduras and Guatemala;

3. That the treaty being, as alleged, now null and void, Guatemala is entitled to claim the whole of British Honduras or, alternatively, the southern part of the colony lying between the Sibun and Sarstoon rivers, as Guatemalan territory, on the ground that Guatemala is the international successor to Spain, to whom the territory formerly belonged.

UNITED KINGDOM REPLY

The United Kingdom Government disputes all three of these contentions. It maintains that it is not solely, nor even mainly, to blame for the fact that Article 7 has not been implemented, and that, in any case, it is still prepared to consider means of carrying it out; that even if it had been solely responsible (which it disputes), the result would be not to invalidate the treaty but merely to provide Guatemala with a claim against the United Kingdom for the fulfilment of the Article or compensation for non-fulfilment; and that, even if the treaty were invalid (which again is disputed), Guatemala would have no right to the territory of British Honduras, or any part of it. Guatemala was not the sole successor to Spain in this part of the world but only acquired, as a successor to Spain, that territory over which the new Guatemalan State in fact exercised jurisdiction. The United Kingdom had been in possession of the territory of British Honduras, not merely long before the conclusion of the 1859 treaty, but also before the achievement of Guatemalan independence in 1821.

LEGAL SETTLEMENT PROPOSED

In January 1940, Britain offered Guatemala the choice between three methods for the arbitration of the dispute:

1. Reference to the Permanent Court of International Justice at The Hague;
2. Reference to an *ad hoc* tribunal of jurists sitting under the rules of arbitration laid down by The Hague Convention of 1907;
3. Reference to a tribunal of three international lawyers, of which the umpire should be nominated by the President of the United States.

The British Government intimated that such arbitration would be confined to the treaty of 1859, and in particular to Article 7. In the Guatemalan reply the third method was accepted, but this was vitiated by the accompanying declaration that the treaty had lapsed through failure to fulfil Article 7, and that Guatemala had the right to 'recover the territory ceded to Great Britain'. The United Kingdom then conceded that the Guatemalan Government should be at liberty to put its territorial claims before the arbitrating tribunal, but the Guatemalan Government rejected this offer, and repeated their assertion that the treaty was null and void.

In 1946 Britain declared its willingness to accept the jurisdiction of the International Court of Justice in all legal disputes arising out of any boundary treaty relating to British Honduras, but the Guatemalans would not accept this unless the Court were empowered to decide the case *ex aequo et bono* (i.e. with reference to extraneous non-legal questions). As the Guatemalan claim was one of legal title, the United Kingdom could not agree that it would justify such exceptional power being given to the Court.

The controversy continued intermittently without any progress towards a settlement being made. In March 1957, an official of the Guatemalan Foreign Ministry, Sr. Jose Luis Mendoza, had informal discussions at the Foreign Office in London. He was informed that the British Government would be glad to continue discussions towards a settlement, and was provided with a list of topics of common interest to Guatemala and British Honduras which might form the basis of negotiations. These include:

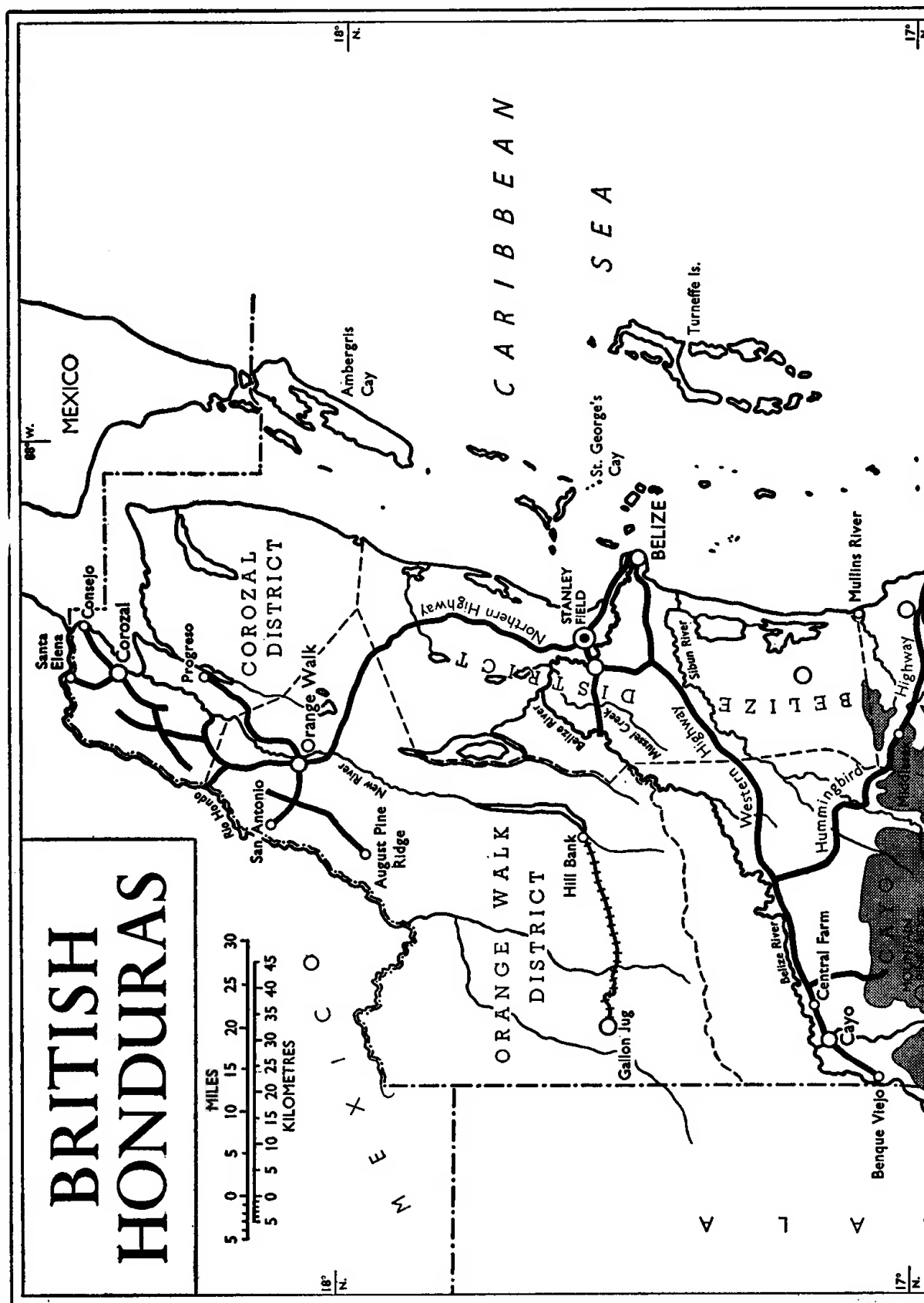
1. Guatemalan free port requirements.
2. The continuation of the road from Punta Gorda to the Guatemalan frontier.
3. The improvement of the road from Belize through El Cayo to the Guatemalan frontier.
4. The transit requirements of developing industries in British Honduras and Guatemala.
5. The Customs régime on both sides of the frontier.
6. The raising of the status of the respective Missions in Guatemala city and London.

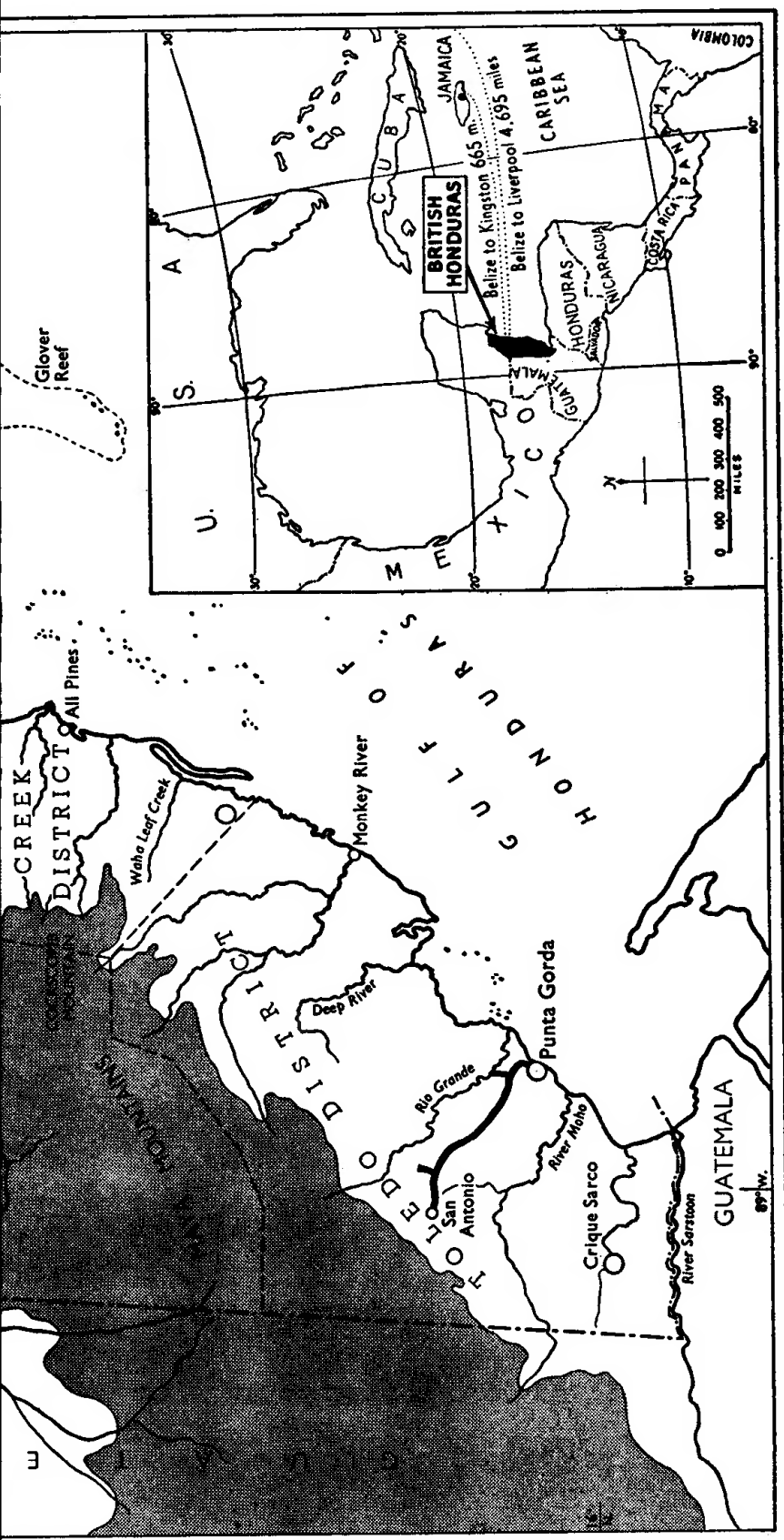
No response has been made by the Guatemalan Government to this offer either, although they have been reminded on several occasions that it is still open.

BRITISH HONDURAN VIEWS

On 17th December, 1957, a resolution was passed unanimously by the Legislative Assembly in British Honduras. Amongst other things, this rejected any claim by any other government than the Government of the United Kingdom to sovereignty over British Honduras, declined to have anything to do with any plan for the incorporation of British Honduras in any other country and reaffirmed the Assembly's loyalty and allegiance to the Crown.

In February 1960 significant constitutional advances for British Honduras were agreed on at a conference in London between the Secretary of State for the Colonies and a delegation from British Honduras in which all shades of political opinion were represented. At the end of the conference, the representative British Honduran members of the delegation unanimously requested, and it was agreed, that a declaration reaffirming their desire to remain within the Commonwealth should appear in the form of a preamble to the new constitution. The representatives of the two main political parties, the People's United Party and the National Independence Party, made a declaration in which they recognised 'the grave affront to the people of British Honduras caused by the persistent propaganda of the Government of Guatemala in furtherance of their unfounded claim to sovereignty over the territory of British Honduras', while indicating their willingness to support 'the endeavours of Her Majesty's Government to obtain an amicable and just resolution of the present dispute' and to assist in negotiating 'a satisfactory and happy end' to it.





APPENDIX 1
THE MEXICAN CLAIM

As mentioned above (p. 2), it has been argued that, if any Spanish-American state succeeded to the rights of Spain, that state was not Guatemala, but Mexico. The Act of Confederation of the United States of Mexico of 31st January, 1824, and the Mexican constitution of 4th October, 1824, both declared that the territory included the captaincy-general of Yucatan. Subsequently, Mexico from time to time put forward claims to British Honduras which were rejected by the United Kingdom. Finally, in 1893, a treaty was signed defining the boundary between Mexico and 'the colony of British Honduras'. This treaty made no mention of the question of sovereignty; it followed, in defining the boundary, the line generally laid down in the Anglo-Spanish treaty of 1783 and the line thus defined is now in force. Recent Mexican governments have taken the formal view that in 1893 Mexico made a sacrifice in the interests of friendship with Britain, that they are prepared to abide by the present situation, but that if this were to be altered (i.e. in favour of Guatemala) Mexico would lay claim at least to that portion of British Honduras which belonged to the captaincy-general at Yucatan (i.e. which lies north of latitude 17° 49'N.).

APPENDIX 2

FACTS ABOUT THE TERRITORY

British Honduras is a small country of 8,866 square miles (nearly 23,000 square kilometres) on the mainland of Central America, with a multi-racial population of about 85,000. Its economy has traditionally been based on the export of timber and other forest products, which in 1950 accounted for more than 85 per cent of total exports, and there has been no tradition of settled agriculture. Under the stimulus of long-term development plans, however, financed largely from United Kingdom funds, considerable progress has been made since the second world war in developing the territory's agricultural potential in order to establish a more balanced economy. Agriculture's share in exports has risen from about 14 per cent in 1950 to 43 per cent in 1958. Citrus is now one of the territory's most valuable exports, and there is a steadily growing sugar industry; production of sugar has increased from about 1,500 tons in 1951 to 16,712 tons in 1959. The livestock and rice industries are also expanding, and progress is being made in the establishment of cocoa, which has not, until recently, been grown on a commercial scale in the territory. In the past 20 years more than 400 miles (645 kilometres) of all-weather roads have been built, in addition to a considerable mileage of feeder-roads.

The central feature of future economic policy is to be planned immigration aimed at the development of the agricultural economy based both on plantations and individual smallholdings. The United Kingdom Government has agreed to make a block grant of \$BH 5.75 million (£1,437,500) over a period of four years in aid of the annual budget of the administration, and has allocated £2 million sterling from Colonial Development and Welfare funds towards expenditure on new developments and services.

Social services have not been neglected, in spite of the difficulties in the way of providing hospitals, schools, and other services for small, scattered and sometimes shifting communities. For example, the provision of beds in government hospitals increased from 183 in 1948 to 469 in 1958, and a network of dispensaries has been built in rural areas; the rate of infant mortality has fallen 22 per cent in the space of eight years; and malaria, until recently the most prevalent endemic disease, will, it is expected, be eliminated from the territory by 1961.

The legislature has a majority of members elected by universal adult suffrage. On the Executive Council there are, in addition to the Governor and three *ex officio* members, six unofficial members elected by the legislature. Since 1955 a quasi-ministerial system has been in operation. At the conference in February 1960 it was agreed that a full-scale ministerial system would be introduced, the leader of the party obtaining a clear majority in a general election being appointed First Minister, and that the number of elected members in the legislature would be increased from 9 to 18 and the number of nominated members from 3 to 5.

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